

AMENDED IN SENATE JUNE 28, 2010

AMENDED IN SENATE JUNE 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 605**

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**Introduced by Assembly Member Portantino**

February 25, 2009

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An act to add Sections 23396.6 and 25503.56 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 605, as amended, Portantino. Alcoholic beverages: instructional tasting events.

The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law provides for various annual fees for the issuance of alcoholic beverage licenses depending upon the type of license issued. The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill would authorize the department to issue to the holder of any off-sale retail license an instructional tasting license that would allow the licenseholder to allow an authorized licensee, as defined, or designated representative of that licensee, to conduct, on a designated portion of, or contiguous to, an existing licensed premises, an instructional event at which tastes of alcoholic beverages may be served to consumers, as provided. The bill would impose an original fee of \$300 and an annual renewal fee of \$261 for the license, which would

be deposited in the Alcohol Beverage Control Fund. By expanding the definition of a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 23396.6 is added to the Business and  
2 Professions Code, to read:

3 23396.6. (a) Notwithstanding any other provision of this  
4 division, the department may issue to the holder of any off-sale  
5 retail license an instructional tasting license for premises operated  
6 in conjunction with the off-sale licensed ~~premises~~; *premises, except*  
7 *that an instructional tasting license shall not be issued to any of*  
8 *the following:*

9 (1) *Off-sale licensees at locations where motor vehicle fuel is*  
10 *sold, unless the licensee operates a fully enclosed off-sale retail*  
11 *area encompassing at least 10,000 square feet.*

12 (2) *Off-sale licensees at locations with a total of less than 5,000*  
13 *square feet of interior retail space, unless the annual gross sales*  
14 *of alcoholic beverages at the licensed location comprise at least*  
15 *75 percent of the total gross sales of all products sold at the*  
16 *licensed premises.*

17 (b) The provisions of Article 1 (commencing with Section  
18 ~~23770~~ 23790) and Article 2 (commencing with Section 23815)  
19 of Chapter 5, and Section 23958.4 of this code, and Section 64.2  
20 of Title 4 of the California Code of Regulations shall not apply to  
21 the issuance of an instructional tasting license. Notwithstanding  
22 paragraph (3) of subdivision (c), the provisions of Article 2  
23 (commencing with Section 23985) and Article 3 (commencing  
24 with Section 24011) of Chapter 6, ~~except for Section 23985.5 and~~  
25 ~~23986, 6~~ shall apply to the issuance of an instructional tasting  
26 license.

(c) An instructional tasting license authorizes the holder to allow an authorized licensee, as defined in Section 25503.56, or the designated representative of an authorized licensee, to conduct an instructional event at which tastes of alcoholic beverages may be served to consumers subject to the following limitations, including the limitations set forth in Section 25503.56:

(1) The licenseholder shall restrict the instructional event to an area that is in the portion of the licensed premises where alcoholic beverages are exposed and offered for sale, and any contiguous areas reasonably related to the merchandising or sale of alcoholic beverages. The area where the instructional event is conducted shall be *within the interior of the existing licensed premises, but* separated from the remainder of the licensed premises by a wall, rope, cable, cord, chain, fence, or other permanent or temporary barrier and shall display signage prohibiting the presence of persons under 21 years of age from entering the area. The provisions of Section 25665 shall apply to the separated area where the instructional event is conducted when the authorized licensee is exercising tasting privileges set forth in Section 25503.56.

(2) The licenseholder bears responsibility for ensuring that persons entering the instructional event area are of legal drinking age. The licenseholder shall not allow any consumer attending the instructional event to leave the event area with an alcoholic beverage.

(3) The instructional tasting license shall not authorize the licenseholder to conduct any on-sale retail sales to consumers attending the instructional event.

(4) *An instructional event shall only take place between the hours of 10 a.m. and 9 p.m.*

(d) An applicant for an instructional tasting license under this section shall, at the time of filing the application for the license, accompany the application with a fee of three hundred dollars (\$300). The annual renewal fee for a license issued pursuant to this section shall be two hundred ~~sixtyone~~ *sixty-one* dollars (\$261) *and shall be subject to subdivision (c) of Section 23320*. Fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund.

SEC. 2. Section 25503.56 is added to the Business and Professions Code, to read:

25503.56. (a) Notwithstanding any other provision of this division, an authorized licensee, or a designated representative of an authorized licensee acting as an agent of the authorized licensee, may conduct, on the area specified by paragraph (1) of subdivision (c) of Section 23396.6, an instructional event for consumers on the subject of wine, beer, or distilled spirits, including, but not limited to, the history, nature, values, and characteristics of wine, beer, or distilled spirits, and the methods of presenting and serving wine, beer, or distilled spirits.

(1) (A) Except as provided in subparagraph (B), and notwithstanding any other provision of this division, the instructional event may include the serving of not more than three tastings in one day to an attendee of legal drinking age. A single tasting of distilled spirits shall not exceed one-fourth of one ounce, a single tasting of wine shall not exceed one ounce, and a single tasting of beer shall not exceed three ounces. The wine, beer, or distilled spirits tasted shall be limited to the products that are authorized to be sold by the authorized licensee and the licenseholder under its off-sale license.

(B) Except for a beer and wine wholesaler who is also a beer manufacturer, an out-of-state beer manufacturer's certificate holder, or who holds more than six distilled spirits wholesaler's licenses, a beer and wine wholesaler may conduct an instructional event, but may not serve tastes of beer.

(C) ~~There shall be no charge~~ *No charge of any sort shall be made* for the tastings. The serving of tastings shall not be deemed a sale of products pursuant to this division.

(D) A person under 21 years of age shall not serve wine, beer, or distilled spirits at the instructional event.

(E) All tastes shall be served by an employee of the authorized licensee, the designated representative of the authorized licensee, or by an employee of the designated representative of the authorized licensee.

(F) An authorized licensee, or a designated representative of an authorized licensee, shall either supply the wine or distilled spirits to be tasted during the instructional event or purchase the wine or distilled spirits from the licenseholder at the original invoiced cost. An authorized licensee, or a designated representative of an authorized licensee, shall purchase beer to be tasted during the

1 instructional event from the licenseholder at the original invoiced  
2 cost.

3 (G) Any unused wine, beer, or distilled spirits remaining from  
4 the tasting shall be removed from the off-sale licensed premises  
5 by the authorized licensee or its designated representative.

6 (2) If the instructional event is conducted by a designated  
7 representative of an authorized licensee, the designated  
8 representative shall not be owned, controlled, or employed directly  
9 or indirectly by the licenseholder on whose premises the  
10 instructional event is held.

11 (3) An instructional event shall be limited to a single type of  
12 alcoholic beverage and tastes, if furnished, shall only be of that  
13 type of alcoholic beverage.

14 (b) For purposes of this section:

15 (1) "Authorized licensee" means a winegrower, California  
16 winegrower's agent, beer and wine importer, beer and wine general  
17 importer, beer and wine wholesaler, *wine broker*, wine rectifier,  
18 distilled spirits manufacturer, distilled spirits manufacturer's agent,  
19 distilled spirits general importer, distilled spirits rectifier, distilled  
20 spirits general rectifier, rectifier, out-of-state distilled spirits  
21 shipper's certificate holder, distilled spirits wholesaler, brandy  
22 manufacturer, brandy importer, California brandy wholesaler, beer  
23 manufacturer, or an out-of-state beer manufacturer certificate  
24 holder. "Authorized licensee" shall not include an entity that solely  
25 holds a combination of a beer and wine wholesale license and an  
26 off-sale beer and wine retail license pursuant to Section 23817.8.

27 (2) "Licenseholder" means an off-sale retail licensee issued an  
28 instructional tasting license pursuant to Section 23396.6.

29 (c) Notwithstanding subdivision (e), a licenseholder may conduct  
30 an instructional event that includes the serving of tastings only  
31 when an authorized licensee or its designated representative are  
32 unable to conduct ~~a scheduled~~ *an instructional event scheduled by*  
33 *the authorized licensee or its designated representative*, provided  
34 the licenseholder supplies the wine, beer, or distilled spirits used  
35 in the instructional event and provides or pays for a person to serve  
36 the wine, beer, or distilled spirits.

37 (d) No more than one authorized licensee, or its designated  
38 representative, may conduct an instructional event that includes  
39 the serving of tastes of wine, beer, or distilled spirits at any one  
40 individual licensed premises of a licenseholder per day.

1 (e) A licenseholder that also holds an on-sale beer and wine  
2 license, an on-sale beer and wine eating place license, or an on-sale  
3 general license shall not allow an authorized licensee, or its  
4 designated representative, to conduct an instructional event at the  
5 same time and location as an instructional event held pursuant to  
6 Section 23386, 25503.5, or 25503.55.

7 (f) A licenseholder shall not condition the allowance of an  
8 instructional event upon the use of a particular designated  
9 representative of an authorized licensee.

10 (g) (1) Notwithstanding any other provision of this division,  
11 and in addition to any point of sale advertising or other advertising  
12 items allowed under this division or under rules or regulations  
13 promulgated by the department, an authorized licensee or its  
14 designated representative, in his or her absolute discretion and  
15 with permission of the licenseholder upon whose premises the  
16 instructional event will be held, may list in an advertisement to  
17 the general public the name and address of the licenseholder, the  
18 names of the alcoholic beverages being featured at the instructional  
19 event, and the time, date, and location of, and other information  
20 about, the instructional event, provided that both of the following  
21 apply:

22 (A) The advertisement does not contain the retail price of the  
23 alcoholic beverages.

24 (B) The listing of the licenseholder's name and address is the  
25 only reference to the licenseholder in the advertisement.

26 (2) Pictures or illustrations of the licenseholder's licensed  
27 premises and laudatory references to the licenseholder in these  
28 advertisements are not authorized. Nothing in this section shall  
29 authorize an authorized licensee or its designated representative  
30 to share in the costs, if any, of the licenseholder.

31 (h) A licenseholder may advertise an instructional event to the  
32 general public. The costs of this advertising shall be borne solely  
33 by the licenseholder. Advertising permitted by this subdivision  
34 includes flyers, newspaper ads, Internet communications, and  
35 interior signage.

36 (i) Except as otherwise provided in this division or by any rules  
37 or regulations promulgated by the department, no premium, gift,  
38 free goods, or other thing of value shall be given away by an  
39 authorized licensee or its designated representative in connection

1 with an instructional event that includes tastings of an alcoholic  
2 beverage.

3 (j) Notwithstanding any other provision of this division or any  
4 rules or regulations promulgated by the department, the  
5 licenseholder or the authorized licensee or its designated  
6 representative are authorized to perform set up and break down of  
7 the instructional event area. The authorized licensee or its  
8 designated representative may provide, free of charge to the  
9 licenseholder, the equipment, materials, and utensils that may be  
10 required during the instructional event.

11 (k) (1) A licenseholder shall not require, or enter into a collusive  
12 scheme with an authorized licensee or its designated representative  
13 to conduct one or more instructional events as a condition of the  
14 licenseholder carrying or continuing to carry a brand or brands of  
15 the authorized licensee or as a condition for display or other  
16 merchandising plan which is based on an agreement to provide  
17 shelf space. An authorized licensee or its designated representative  
18 shall not require any preferential treatment or benefit from, or enter  
19 into a collusive scheme with, a licenseholder as a condition of  
20 conducting one or more instructional events, require a licenseholder  
21 to carry or continue to carry a brand or brands of the authorized  
22 licensee as a condition of conducting one or more instructional  
23 events, or condition display or other merchandising plans that are  
24 based on agreements for the provision of shelf space on the  
25 conducting of one or more instructional events. Any agreement,  
26 whether written or oral, entered into by and between a licenseholder  
27 and an authorized licensee *or its designated representative* that  
28 precludes the conducting of instructional events on the premises  
29 of the licenseholder by any other authorized licensee is prohibited.

30 (2) In addition to any other remedies available under this  
31 division, upon a finding by the department of a failure to comply  
32 with this subdivision, the department shall suspend the instructional  
33 tasting license of the licenseholder and the privilege of the  
34 authorized licensee to conduct instructional events for not less than  
35 six months but for no more than one year.

36 SEC. 3. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty

- 1 for a crime or infraction, within the meaning of Section 17556 of
- 2 the Government Code, or changes the definition of a crime within
- 3 the meaning of Section 6 of Article XIII B of the California
- 4 Constitution.

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